

ORIGINAL

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 19 2005

at 11 o'clock and 10 min. AM
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00381 SOM
)	
Plaintiff,)	GOVERNMENT'S SENTENCING
)	STATEMENT; CERTIFICATE OF
vs.)	SERVICE
)	
JAVIER MARTINEZ-ARELLANO,)	
)	
)	
Defendant.)	DATE: February 6, 2006
)	TIME: 1:30 p.m.
)	JUDGE: Susan Oki Mollway
)	

GOVERNMENT'S SENTENCING STATEMENT

A. Introduction

Defendant JAVIER MARTINEZ-ARELLANO

("Martinez-Arellano") appears before this Court for sentencing based upon his guilty plea. On October 19, 2005, Defendant

Martinez-Arellano pled guilty to unlawful re-entry into the United States after deportation in violation of 8 U.S.C. §§ 1326(a) and (b)(1).

B. Discussion

Government counsel has reviewed the draft Presentence Report prepared by U.S. Probation Officer Neil Tsukiyama dated December 14, 2005. We agree with the factual information contained in the Presentence Report, as well as the calculation of the base offense level (level 8) and the total adjusted offense level (level 10).

We disagree, however, with the PSR's determination that the criminal history is category II. For the reasons stated below, we believe that the appropriate criminal history applicable to Defendant Martinez-Arellano is criminal history Category III, which yields an advisory Guideline Sentencing range of level 10 (CH III)= 10-16 months.

Contrary to the assessment in PSR paragraph 28, we believe that Defendant's prior convictions for Presenting False Identification to Police Officers and Carrying a Concealed Weapon in Huntington Park, California on August 3, 1994 are countable pursuant to Guideline § 4A1.2(e)(2), which provides that any prior sentence that was imposed within ten years of the Defendant's commencement of the instant offense is counted. As the Defendant acknowledges, Defendant commenced the instant

offense on September 11, 2002 when he unlawfully re-entered the United States near San Ysidro, California (see PSR paragraph 7). Consequently, Defendant's convictions in Huntington Park, California on August 3, 1994 occurred within the ten year period presiding the commencement of the instant offense (on September 11, 2002) of re-entry into the United States after deportation. See also Application Note 8 to Guideline § 4A1.2 which expressly states that the term "commencement of the instant offense" includes any relevant conduct.

Accordingly, Defendant's 1994 Huntington Park convictions are countable. And, because Defendant received a sentence of at least 60 days (as to the Concealed Weapon conviction) 2 criminal history points are added pursuant to § 4A1.1(b). Thus, the total of Defendant's criminal history points should be 5, thereby establishing a criminal history category of Category III.

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C. Forfeitures

No criminal forfeitures are involved in this prosecution.

DATED: December 19th, 2005, at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By 

LOUIS A. BRACCO

Assistant U. S. Attorney

CERTIFICATE OF SERVICE

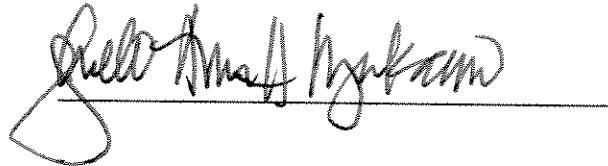
I HEREBY CERTIFY that the foregoing document was duly served, by hand delivery, addressed as set forth below:

DONNA M. GRAY, ESQ.
Assistant Federal Public Defender
300 Ala Moana Blvd., Suite 7-104
Honolulu, Hawaii 96850

Attorney for Defendant
JAVIER MARTINEZ-ARELLANO

Neil Tsukiyama, Probation Officer
U. S. Probation Office
U.S. Courthouse, Room C-110
300 Ala Moana Boulevard
Honolulu, HI 96850

DATED: December 19th, 2005, at Honolulu, Hawaii.

A handwritten signature in dark ink, appearing to read "Neil Tsukiyama", is written over a horizontal line.

Note to Clerk:
Please do not
seal.

Thank you.
L. Bracco